UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JAMES WEAVER, JR., on behalf of himself individually and as guardian for his two children, JW III, a minor child and LW, a minor child and JAMES WEAVER SENIOR, on behalf of his granddaughter, JW a minor child,

Plaintiffs,

v.

CITY OF STOCKTON, STOCKTON POLICE DEPARTMENT, KEVIN HACHLER, ERIC JONES, and DOES 1 to 50,

Defendants.

No. 2:20-cv-00990-JAM-EFB

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO DISMISS AND DENYING MOTION TO STRIKE

On May 25, 2019, an off-duty Stockton Police Department Officer, Kevin Hachler ("Officer Hachler"), arrested James Weaver ("Weaver"), a Black man, at gunpoint while in the car with his two children and niece (collectively "the children"). Weaver then filed suit, on behalf of himself, as guardian for his two children, and with his father, James Weaver, Senior, as guardian

for his niece (collectively "Plaintiffs"). Plaintiffs are suing Officer Hachler, the Stockton Police Department, its Police Chief, and the City of Stockton (collectively "Defendants"). Compl., ECF No. 1.

Defendants now move to strike portions of Plaintiffs' Complaint, Mot. to Strike, ECF No. 5-1, and to dismiss Plaintiffs' claims, Mot. to Dismiss ("MTD"), ECF No. 4-1. Plaintiffs oppose both motions. See Opp'n to Mot. to Strike, ECF No. 8; see also Opp'n to MTD, ECF No. 7. For the reasons asserted below, the Court GRANTS in part and DENIES in part Defendants' motion to dismiss and DENIES Defendants' motion to strike.[1]

I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

On May 25, 2019, Weaver drove from his home in Reno, Nevada to the City of Stockton, with his two children and young niece. Compl. ¶ 14. Weaver towed a trailer, with the intent to buy a car in Stockton and tow it back home to Reno. Id.

While on the highway, a car started to follow them. Id. This car drove at an unsafe distance, unsafe speed, and unsafe manner. Id. Weaver exited the highway into the City of Stockton and the car followed. Id. The driver then ran out of the car and pulled out his gun. Id. The driver turned out to be Officer Hachler, who was off-duty and not in uniform. Id. Officer Hachler pointed his gun at Weaver, assaulted him physically and

[1] This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for August 25, 2020.

threw him to the ground, all in the presence of the three children. Id. Because Officer Hachler did not announce that he was a police officer, Weaver thought he was being confronted by a violent person that was going to rob him and shoot him. Id. at ¶ 15.

Officer Hachler then summoned other members of the Stockton Police Department to aid in arresting Weaver. Id. Officer Hachler falsely accused Weaver of having assaulted him with a deadly weapon in violation of California Penal Code § 245 and of driving recklessly. Id. Weaver was then taken into custody at the San Joaquin County Sheriff's Department. Id.

Weaver's two children and niece were also detained and taken into custody at the San Joaquin County Sheriff's Department. Id. ¶ 16. The children were held until Weaver's wife drove the 200 miles from Reno to Stockton, to retrieve them. Id.

Because of the arrest, Weaver's car and trailer were impounded and towed. Id. ¶ 17. He was also jailed, required to post a large money bail to be released, and forced to travel to the City of Stockton to attend Court. Id. However, the San Joaquin County District Attorney declined to file any charges against him. Id.

Close to a year later, Weaver filed this suit against Defendants alleging violations of his and the children's civil and constitutional rights. See Compl. Specifically, Plaintiffs' allege the following six causes of action against Defendants: (1) violation of the Fourth Amendment to the United States Constitution, (2) violation of the Fourteenth Amendment to the United States Constitution, (3) interference with Right of Equal

Protection and Due Process under Article I, § 7 of the California Constitution, (4) False Arrest and False Imprisonment, (5) violation of the Bane Act, and (6) Negligence. See Compl. Defendants now seek to dismiss Plaintiffs' claims.[2] MTD at 1. Defendants also seek to strike paragraph 25 and paragraph 27 in Plaintiffs' Complaint.

II. OPINION

A. Motion to Strike

1. Legal Standard

Federal Rule of Civil Procedure 12(f) permits a court to "strike from a pleading . . . any redundant, immaterial, impertinent, or scandalous matter." Motions to strike are "disfavored"; they "should not be granted unless the matter to be stricken clearly could have no possible bearing on the subject of the litigation." Platte Anchor Bolt, Inc. v. IHI, Inc., 352 F. Supp. 2d 1048, 1057 (N.D. Cal. 2004) (citation omitted). In ruling on a 12(f) motion, the Court must view the pleadings in the light most favorable to the nonmoving party. Id.

2. Analysis

Defendants allege that paragraphs 25 and 27 in Plaintiffs' Complaint "should be stricken for disclosing information learned about Officer Hachler in violation of a protective order issued [in a different matter]." Mot. to Strike at 5. Paragraph 25

[2] The Court does not address the fourth, fifth, and sixth claims, because Defendants' arguments to dismiss those claims went beyond the Court's page limitations. Order RE Filing Requirements, ECF No. 3-2, at 1.

includes the following information: (1) Officer Hachler's year of employment, (2) that he has been the subject of citizens' complaints, and (3) the use of force Officer Hachler engaged in against a "young Hispanic male" that is currently pending suit in Duarte et al., v. City of Stockton, 2:19-cv-00007-MCE-CKD (henceforth "Duarte Case"), in front of a different Judge within this district. Compl. ¶ 25. Paragraph 27 alleges that the City of Stockton, the Stockton Police Department, and its Police Chief, ratified and approved Officer Hachler's actions by: (1) not considering pointing a gun to be use of force, (2) failing to find that Officer Hachler's use of force against Weaver were against their policies, (3) failing to terminate or reprimand Officer Hachler, and (4) failing to enact new policies that would prevent use of force in the future. Id. ¶ 27.

Plaintiffs' are currently represented by the same attorney representing the plaintiff in the Duarte Case; Defendants are also represented by the same counsel in both cases. Id. Defendants believe that Plaintiffs obtained the information alleged in those two paragraphs through their counsel, in violation of a stipulated protective order in the Duarte Case. Id.

The protective order encompasses "information where public disclosure is likely to result in particularized harm, or where public disclosure would violate privacy interests recognized by law." Mot. to Strike, Exh. A, Protective Order, ECF No. 5-2. The order lists the following as examples of confidential information: (a) personnel file records of any peace officer; (b) medical records; (c) social security numbers and similar

sensitive identifying information. Id. Although not an exhaustive list, the information at issue here is unlike those examples.

As Plaintiffs contend, the information in paragraphs 25 and 27 is "general and not specific, and [does] not contain any personal or specific information." Opp'n to Mot. to Strike at 2. Moreover, Plaintiffs allege they obtained the information through independent sources. Id. at 2-3. Indeed, a quick internet search on this matter reveals Officer Hachler's use of force against Mr. Duarte. See Ken Mashinchi, *Complaint Alleges Racial Profiling, Assault in Stockton Cinco de Mayo Sideshow Arrests*, Fox 40 (Aug. 20, 2018), https://fox40.com/news/local-news/complaint-alleges-racial-profiling-assault-in-stockton-cinco-de-mayo-sideshow-arrests/. Lastly, paragraph 27 does not involve any information regarding the Duarte Case—it describes only the alleged ratification of Officer Hachler's use of force against Weaver. See Compl. ¶ 27. Therefore, the Court finds neither paragraph is in violation of the Duarte protective order.[3]

Defendants also argue the allegations in paragraph 25 and 27 should be stricken as "scandalous." Mot. to Strike at 5. "Allegations may be stricken as scandalous if the matter bears

[3] Plaintiffs argue this motion is not ripe for adjudication because the issue of what the protective order encompasses as confidential is currently under submission before Magistrate Judge Delaney. Opp'n to Mot. to Strike at 1. However, the Court finds that holding, even if not yet issued, is not binding on this Court. See Whittlestone, Inc. v. Handi-Craft Co., 618 F.3d 970, 973 (9th Cir. 2010)("[W]hether to grant a motion to strike lies within the sound discretion of the district court.").

no possible relation to the controversy or may cause the objecting party prejudice." Wilkerson v. Butler, 229 F.R.D. 166, 170(E.D. Cal. 2005). Both paragraphs clearly relate to the controversy at issue. And neither paragraph prejudices Officer Hachler. Although Defendants cite cases to support the contrary, those cases are distinguishable. See Reply to Mot. to Strike, ECF No. 11, at 2-3. In Blodgett v. Allstate Ins. Co., for instance, the court struck the allegations as scandalous because it violated federal and state evidentiary rules. No. 2:11-CV-02408-MCE, 2012 WL 2377031, at *6 (E.D. Cal. June 22, 2012). In the other two cases Defendants rely on, the courts found the allegations to be scandalous because they used inflammatory language. See Schultz v. Braga, 290 F. Supp. 2d 637, 654–55 (D. Md. 2003), aff'd, 455 F.3d 470 (4th Cir. 2006) ("[P]laintiffs have chosen to use inflammatory language . . . [defendant's] motion to strike will be granted."); see also, Rosembert v. Borough of E. Lansdowne, 14 F. Supp. 3d 631, 649 (E.D. Pa. 2014) (District Court striking as scandalous matter allegations referring to the officers as "lying," "corrupt," and "motivated by their greed and racist desires."). In contrast, the allegations at issue here are neither barred by evidentiary law nor do they use inflammatory language. The Court therefore does not find these allegations to be scandalous and DENIES Defendants' motion to strike.

B. Motion to Dismiss

1. Legal Standard

Federal Rule of Civil Procedure 8(a)(2) requires "a short and plain statement of the claim showing that the pleader is

entitled to relief." A suit must be dismissed if the plaintiff fails to "state a claim upon which relief can be granted." Fed. R. Civ. Proc. 12(b)(6). To defeat a Rule 12(b)(6) motion to dismiss, a plaintiff must "plead enough facts to state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twmobly, 550 U.S. 544, 570 (2007). This plausibility standard requires "factual content that allows the court to draw a reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

"At this stage, the Court 'must accept as true all of the allegations contained in a complaint.'" Id. But it need not "accept as true a legal conclusion couched as a factual allegation." Id. In dismissals for failure to state a claim, leave to amend the pleading should be granted, unless "it is clear that the complaint could not be saved by any amendment." Jackson v. Carey, 353 F.3d 750, 758 (9th Cir. 2003).

2. Analysis

a. Fourth Amendment Claim Against Officer Hachler

The Fourth Amendment protects against "unreasonable searches and seizures." Whren v. U.S., 517 U.S. 806 (1996). Plaintiffs' first claim alleges that Officer Hachler violated the Fourth Amendment by utilizing "unreasonable force in seizing, assaulting, and wrongfully arresting [Weaver], and in seizing and wrongfully detaining [the children]." Compl. ¶ 30. Defendants, however, ask the Court to dismiss this claim as asserted against Officer Hachler, arguing that he is entitled to qualified immunity. MTD at 4.

Qualified immunity provides "immunity from suit" rather than just a defense to a liability. Saucier v. Katz, 533 U.S. 194, 200-01 (2001) (quoting Mitchell v. Forsyth, 472 U.S. 511, 526 (1985)). To determine whether Officer Hachler is entitled to qualified immunity, the Court must evaluate: (1) whether the facts, taken in the light most favorable to Plaintiffs, show that Officer Hachler's conduct violated a constitutional right, and (2) whether that right was "clearly established" at the time of the incident. Id. at 201.

(i) Violation of Constitutional Right

The Plaintiffs argue that determining whether Officer Hachler violated their constitutional rights requires discovery. Opp'n to MTD at 6 (citing Mitchell, 472 U.S. at 526). Plaintiffs contend a decision of qualified immunity is therefore "inappropriate at this juncture." Opp'n to MTD at 6. The Court disagrees.

Mitchell states, "a defendant pleading qualified immunity is entitled to dismissal before the commencement of discovery," unless plaintiffs' properly allege "a claim of violation of clearly established law." 472 U.S. at 526. The Court can therefore grant qualified immunity at the motion to dismiss stage, if it determines, based on the Complaint, that qualified immunity is proper. O'Brien v. Welty, 818 F.3d 920, 936 (9th Cir. 2016). Taking Plaintiffs' allegations as true, the Court finds that Officer Hachler violated their constitutional rights and is not entitled to qualified immunity under this prong.

Cal. Penal Code § 830.1 grants police officers the authority to make off-duty arrests as set forth in Cal. Penal

Code § 836. Johnson v. Lewis, 120 Cal. App. 4th 443, 454-55 (2004) (citing Inouye v. County of Los Angeles, 30 Cal. App. 4th 278, 284 (1994)). Under Section 836, a police officer may make a warrantless arrest if he has "probable cause to believe that a person to be arrested has committed a public offense in the officer's presence." Cal. Penal Code § 836(a)(1). The Fourth Amendment grants officers this same authority to make warrantless arrests. Atwater v. City of Lago Vista, 532 U.S. 318, 354 (2001).

Plaintiffs do not dispute Officer Hachler's off-duty authority. And while they do argue "there are no facts within the complaint under which probable cause for an arrest exists," Opp'n to MTD at 4, the crux of Plaintiffs' Fourth Amendment claim rests on Officer Hachler's use of force, id. at 5.

Claims against law enforcement officials for use of excessive force in the course of arrest are analyzed under the Fourth Amendment's "objective reasonableness" standard. Graham v. Connor, 490 U.S. 386, 388 (1989). "Determining whether the force used to effect a particular seizure is reasonable under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake." Id. at 396. The first factor in determining whether the force used was excessive, is the severity of the force applied. Tekle v. U.S., 511 F.3d 839, 844 (2007). The second, and "most important factor," is the need for the force used. Id. This balancing test considers the totality of the facts and circumstances, including: (1) the

severity of the crime at issue, (2) whether the suspect poses an immediate threat to the safety of the officers or others, and (3) whether he is actively resisting arrest or attempting to evade arrest by flight. Id.

Defendants concede that "the pointing of a gun at someone may constitute excessive force, even if it does not cause physical injury." MTD at 8 (quoting Espinoza v. City & Cty. of San Francisco, 598 F.3d 528, 544 (9th Cir. 2010)). Therefore, the severity of the force used was "a high level of force." Espinoza, 598 F.3d at 538 ("pointing a loaded gun at a suspect, employing the threat of deadly force, is use of a high level of force."). As for the "need for the force used," Plaintiffs' allege that although Weaver had committed no crime, Officer Hachler arrested him and used unreasonable force by pointing his gun and "assault[ing] him physically." Compl. ¶ 14. Under these facts, there was no need for force since (1) there was no crime, (2) Weaver posed no immediate threat to anyone's safety, (3) and he was not actively attempting to resist arrest or flee. The Court therefore finds the Complaint properly alleges that Officer Hachler violated Plaintiffs' constitutional rights by using excessive force.

(ii) Clearly Established Right

In determining whether a right is clearly established, the dispositive inquiry is whether based on the law at the time of the conduct, the officer had fair notice that his conduct was unlawful. Kisela v. Hughes, 138 S.Ct. 1148, 1152 (2018). While a case need not be "directly on point for a right to be clearly established, existing precedent must have placed the statutory

or constitutional question beyond debate." Id. Put simply, qualified immunity "protects all but the plainly incompetent or those who knowingly violate the law." Id.

Defendants argue that the law as it pertains to Officer Hachler's conduct was not clearly established, because there was no case stating that "an officer who is off-duty, in plain clothes, in his own private vehicle," violates the Fourth Amendment when displaying his firearm. MTD at 8. They argue the only factual analogous case is a California Court of Appeals case that held an off-duty arson investigator had the authority to effectuate an arrest of a person who committed a traffic violation in his presence. Id. (citing Johnson v. Lewis, 120 Cal. App. 4th 443, 453 (2004)). But the issue is not whether Officer Hachler had the authority to arrest Weaver while off-duty. Rather, the qualified immunity inquiry rests on whether it was clearly established that it was unlawful for Officer Hachler to point his gun at Weaver under these circumstances.

The Court finds Plaintiffs' reliance on Tekle to be instructive. Opp'n to MTD at 5. In Tekle, the Ninth Circuit found that although there was no "prior case specifically prohibiting the use of handcuffs and weapons by more than twenty officers to subdue an unarmed eleven-year-old who is not suspected of any wrongdoing and is cooperating," the law was nevertheless clearly established in that such conduct constituted the use of excessive force. 511 F.3d at 847. The court found it significant that the Ninth Circuit has "held since 1984 that pointing a gun at a suspect's head can constitute excessive force in this circuit." Id. The court

then cited cases holding as much and concluded that a "reasonable officer would have known the force used against [the plaintiff] violated his constitutional rights. . . even absent a Ninth Circuit case presenting the same facts." Id.

The instant case is also one of those obvious situations where the "right's contours were sufficiently definite that any reasonable official in the defendant's shoes would have understood he was violating it." Kisela, 138 S.Ct. at 1153 (citations omitted). The facts as currently plead allege that Weaver posed no threat, did not fail to comply with any orders, and was not attempting to flee. Officer Hachler simply drove up behind Weaver and immediately got out of his car, pointing his gun, without announcing that he was a police officer. Contra MTD at 9 (citing United States v. Thompson, 558 F.2d 522, 524 (9th Cir. 1977) ("A police officer attempting to make an investigatory detention may properly display some force when it becomes apparent that an individual will not otherwise comply.)). Under these facts, a reasonable officer would know that it would be excessive force to point his gun while effectuating the arrest. Espinoza, 598 at 544.

While it is true that clearly established law cannot be defined "at a high level of generality," Kisela, 138 S.Ct. at 1152, a case need not be "precisely on all fours on the facts and law involved here," Tekle, 511 F.3d at 847. And only "the plainly incompetent" would assume that what is considered unlawful force for an on-duty officer would not be considered unlawful force for an off-duty officer. The Court therefore denies dismissal of this claim on the grounds of qualified

immunity.

b. Fourteenth Amendment Claim

Under the Fourteenth Amendment's Due Process Clause, no State may "deprive any person of life, liberty, or property, without due process of law." U.S. Const. Amend. XIV, § 2. The substantive due process guarantee "protects against government power arbitrarily and oppressively exercised." County of Sacramento v. Lewis, 523 U.S. 833, 846 (1998)(citing Daniels v. Williams, 474 U.S. 327, 331(1986)). But "only the most egregious official conduct can be said to be arbitrary in the constitutional sense." Id. (citation omitted). The threshold question is therefore "whether the behavior of the governmental officer is so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience." Id. at 847 n.8.

Plaintiffs argue Officer Hachler's actions on May 25, 2019 meet this threshold. Opp'n to MTD at 6. Defendants argue, on the other hand, that this was "a daily routine occurrence . . . a traffic stop and a resultant arrest of a suspected offender." MTD at 11. Plaintiffs contend that this argument is offensive. Opp'n to MTD at 6. They state that "[a]ll citizens, including Black Americans, have a fundamental right, not to be falsely accused of violent felonies, [and] not to be arrested at the end of a gun barrel in front of their children[.]" Id.

The Court does not take lightly that "[o]ur country is now in the midst of a serious examination of the violations of due process and equal protection rights of Black Americans." Id. The Court recognizes that "the burden of aggressive and intrusive police action falls disproportionately on African-

American . . . males." Washington v. Lambert, 98 F.3d 1181, 1187 (1996).

But under a substantive due process inquiry, the Court must focus only on Plaintiffs' substantive due process rights. And while it may shock the Country's conscience "to have Black Americans singularly threatened with grave bodily injury and even death, during routine traffic stops, by white police who are charged to protect and serve all Americans," Opp'n to MTD at 6, Officer Hachler's behavior does not shock the conscience by substantive due process standards.

Only something as egregious as forcibly pumping a suspect's stomach "offends due process as conduct 'that shocks the conscience' and violates the 'decencies of civilized conduct.'" Rochin v. California, 324 U.S. 165, 172-73 (1952). The Supreme Court has adhered to that benchmark since 1952. Lewis, 523 U.S. at 846-847. This standard, therefore, does not impose liability "whenever someone cloaked with state authority causes harm." Id. at 848. For that reason, even the wrongful arrest of a father, subjected to verbal abuse, in front of his four and eight-year-old children has been considered not to "shock the conscience." Rosenbaum v. Washoe County, 663 F.3d 1071, 1081 (2011). Likewise, Officer Hachler's actions do not rise to the level of a substantive due process violation.

Based on this binding precedent, the Court DISMISSES Plaintiffs' Fourteenth Amendment claim WITH PREJUDICE.

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c. Monell Claim

Municipalities can be sued directly under 42 U.S.C. § 1983 for an unconstitutional custom, policy, or practice. Monell v. Dep't of Soc. Servs. of City of New York, 436 U.S. 658, 691 (2018). A Monell claim can be based on three possible theories by alleging that: (1) official policies or established customs inflicted the alleged constitutional injury; (2) omissions or failures to act reflected a local government policy of deliberate indifference to the constitutional rights at issue; or (3) that a city employee with final policy-making authority ratified a subordinates unconstitutional act. Clouthier v. Cty. of Contra Costa, 591 F.3d 1232, 1249-50 (9th Cir. 2010), overruled on other grounds by Castro v. Cty. of Los Angeles, 833 F.3d 1060 (9th Cir. 2016).

Plaintiffs argue they "have pled municipal liability under all three theories." Opp'n to MTD at 7. Defendants seek to dismiss Plaintiffs' claim in its entirety. MTD at 13. However, Defendants' arguments run beyond the Court's page limitations for both their memorandum in support of the motion to dismiss and their reply brief. As described in the issuance of sanctions below, the Court will only address the arguments Defendants made within the page limits.

(i) Stockton Police Department

As an initial matter, Defendants argue that the Stockton Police Department should be dismissed because a "municipal department is not generally considered a 'person' within the meaning of Section 1983." MTD at 2. Moreover, the City of Stockton is already named, which makes this duplicative. Id.

Defendants rely on Vance v. County of Santa Clara, which found that suing the Santa Clara Department of Corrections was improper because "the term 'persons' does not encompass municipal departments." 98 F. Supp. 993 (N.D. Cal. 1996).

Plaintiffs, however, rely on a more recent case in the Ninth Circuit finding that the Los Angeles County Sheriff's Department was subject to liability under Section 1983. Streit v. County of Los Angeles, 236 F.3d 552, 565-67 (9th Cir. 2001); see also Karim-Panahi v. Los Angeles, 839 F.2d 621, 624 n. 2 (9th Cir. 1988)("Municipal police departments . . . can be sued in federal court for alleged civil rights violations."). The Court is bound by this precedent. Defendants' request to dismiss the Stockton Police Department is therefore DENIED.

(ii) Custom or Policy

Absent a formal governmental policy, a plaintiff must show a "longstanding practice or custom which constitutes the standard operating procedure of the local government entity." Trevino v. Gates, 99 F.3d 911, 918 (9th Cir. 1996) (citations omitted). Liability for an improper custom "cannot be predicated on isolated or sporadic events." Id. Rather, "it must be founded upon practices of sufficient duration, frequency and consistency that the conduct has become a traditional method of carrying out policy." Id.

Plaintiffs allege that the Stockton Police Department has a custom of not terminating officers "for unreasonable or excessive force." Opp'n to MTD at 7. They also allege that the Stockton Police Department has a custom of not considering "the drawing of a gun and pointing it at a civilian to be a use of

force, so that no use of force report is required." Id. at 7-8.

But Defendants argue that although Plaintiffs "recite to numerous news articles, unsworn allegations and settlements," and cases in their Complaint, "none of those alleged incidents bear any resemblance whatsoever to the incident [presently] before the Court." MTD at 14. They therefore contend that "none of these incidents demonstrate the precise link required between the conduct that put the municipality on notice and the alleged policy deficiency." Id. In other words, Defendants argue Plaintiffs "have not pled sufficient facts." Id. at 13.

Previously, the Ninth Circuit interpreted claims of municipal liability under Section 1983 "based on nothing more than a bare allegation that the individual officers' conduct conformed to official policy, custom, or practice," as "sufficient to withstand a motion to dismiss." AE ex rel. Hernandez v. Cnty. of Tulare, 666 F.3d 631, 637 (9th Cir. 2012). It has since changed course and adopted the same two principals common to 12(b)(6) motions. Id. First, "to be entitled to the presumption of truth, allegations in a complaint . . . may not simply recite the elements of a cause of action but must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively." Id. (quoting Starr v. Bacca, 652 F.3d 1202, 1216 (9th Cir. 2011)). Second, those allegations taken as true, "must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation." Id. The Court finds Plaintiffs' have met this pleading standard.

First, Plaintiffs "make detailed factual allegations that go well beyond reciting the elements of a [Monell Claim]." Starr, 652 F.3d at 1217. Plaintiffs specifically allege fifteen incidents in which officers of the Stockton Police Department used excessive force, Compl. ¶ 24(i), including one incident that involves Hachler himself using excessive force against another individual. Id. ¶ 25(b). These lawsuits were filed "to show Defendants' practice of allowing excessive force to occur and continue." Opp'n to MTD at 8. This Court has previously found that similar allegations are "'sufficiently detailed,' to give Defendants 'fair notice' granting them the opportunity 'to defend [themselves] effectively." McCoy v. City of Vallejo, No. 2:19-cv-001191-JAM-CKD, 2020 WL 374356, at * 3(E.D. Cal. January 23, 2020)(quoting Starr, 652 F.3d at 1217 and finding twenty-one allegations of the Vallejo Police Department's use of excessive force to be sufficiently detailed for purpose of demonstrating the city's "awareness of this pattern"). Plaintiffs' allegations are therefore "entitled to the presumption of truth." Id.

Second, these allegations plausibly suggest that Defendants were aware that "the department as a whole had [excessive force] issues." Opp'n to MTD at 8. And "[d]efendants have not provided an 'alternative explanation' that would require the Court to conclude Plaintiffs' explanation 'is not a plausible conclusion'." McCoy, 2020 WL 374356, at *3 (quoting Starr, 652 F.3d at 1216). Instead, Defendants simply argue "the incidents they claim show a custom or practice . . . are all factually dissimilar and temporally disconnected." MTD at 15. But the

incidents do not need to be identical to establish plausibility of a custom. A custom can be "inferred from . . . evidence of repeated constitutional violations for which the errant municipal officers were not discharged or reprimanded." Opp'n to MTD at 7; see also McCoy, 2020 WL 374356, at *2. And such an inference can be made from the evidence Plaintiffs' plead in their Complaint. Accordingly, the Court finds the allegations in Plaintiffs' Complaint satisfy the requisite pleading standard as to this theory.

(iii) Failure to Train

Failure to train can only serve as the basis for Section 1983 liability when it "amounts to deliberate indifference to the rights of persons with whom the police come into contact." City of Canton, 489 U.S. 378, 388 (1989).

Defendants argue that Plaintiffs have failed "to identify or state how or in what way the City's Police Department failed to properly train Officer Hachler." MTD at 15. The rest of their arguments, however, are beyond the Court's page limits in both of their briefs. Accordingly, based on this argument alone the Court disagrees with Defendants.

Plaintiffs did identify how the Stockton Police Department failed to properly train Officer Hachler. For instance, Plaintiffs alleged that Officer Hachler's actions "were inconsistent, uncompliant, or not conforming [with] mandatory training provided by the Commission on Peace Officer Standards and Training." Compl. ¶ 27(c). Plaintiffs' also listed "multiple cases of the use of excessive force by the Stockton Police . . . where guns were pulled but not fired." Opp'n to

MTD at 8 (citing Compl. ¶ 24(i)). Moreover, Plaintiffs' allege that even though pointing a gun constitutes excessive force, the City of Stockton did not train nor require officers to consider this a use of force or file use of force reports. Id. at 9. By turning a "blind eye" on this issue, Plaintiffs allege that the City of Stockton was deliberately indifferent. Id.

At this stage, "Plaintiff's explanation [need not] be true or even probable," rather "[t]he factual allegations of the complaint need only 'plausibly suggest an entitlement to relief.'" McCoy, 2020 WL 374356, at *3 (quoting Starr, 652 F.3d at 1217). The Court finds Plaintiffs allegations make such a suggestion. The Court therefore DENIES dismissal of the Monell claim under this theory and under the other theories alleged since they went unchallenged within the page limits.

d. Article 1 § 7 of the California Constitution

Plaintiffs' third claim alleges Defendants' violated their right of equal protection and due process under Article I Section 7 of the California Constitution. Compl. ¶ 41-48. That section provides, "[a] person may not be deprived of life, liberty, or property without due process of law." Article 1 § 7(a). However, this provision does not by itself "afford a right to seek damages to remedy the asserted violation of due process liberty interest." Katzberg v. Regents of University of California, 29 Cal. 4th 300, 329 (2002). For this reason, Defendants' argue that Plaintiffs' claim is not legally cognizable and therefore fails. MTD at 13.

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Plaintiffs, on the other hand, argue they are requesting declaratory and injunctive relief—not damages. Opp'n to MTD at 10-11. This contradicts Plaintiffs' Complaint, which also seeks "compensatory damages" and "punitive damages" for Defendants' alleged violation of Article 1 Section 7. Compl. ¶ 48. Therefore, this claim is DISMISSED WITH PREJUDICE, but only to the extent it seeks damages.

3. Sanctions

The Court need not consider the rest of the arguments raised in Defendants' motion to dismiss and reply briefs because they violate the Court's page limits. The Court's Order RE Filing Requirements ("Order") clearly states that for all motions, other than those under Federal Rule of Civil Procedure 56 and 65, memoranda of law in support are limited to fifteen (15) pages and reply memoranda are limited to (5) pages. Order at 1. The Order also states that the Court does not consider "any arguments made past the page limit." Id.

Moreover, "violation of this Order [results] in monetary sanctions [] against counsel in the amount of $50.00 per page [past the page limit]." Id. Defendants' memoranda of law in support of their motion to dismiss is 19 pages (4 pages past the limit) and their reply is 10 pages (5 pages past the limit). Defendants' counsel must therefore send a check payable to the Clerk for the Eastern District of California for $450.00, no later than seven days from the date of this order.

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III. ORDER

For the reasons set forth above, the Court DENIES Defendants' Motion to Strike. The Court GRANTS Defendants Motion to Dismiss Plaintiffs' Substantive Due Process Claim WITH PREJUDICE and DENIES Defendants' Motion to Dismiss as to all other claims.

IT IS SO ORDERED.

Dated: September 25, 2020

JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE